

CLAUSE I-100 – PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (August 2002)

NOTE: This clause is applicable in solicitations and subcontracts when it is contemplated that cost or pricing data will be required from the Subcontractor or any lower-tier subcontractor.

- (a) If any price, including profit or fee, negotiated in connection with this subcontract, or any cost reimbursable under this subcontract, was increased by any significant amount because –
 - (1) the Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,
 - (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or
 - (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction.
- (b) Any reduction in the subcontract price under paragraph (a) above due to defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor; provided, that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- (c) (1) If the Subcontracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
 - (i) The Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
 - (ii) The Subcontracting Officer should have known that the cost or pricing data in issue were defective even though the Subcontractor took no affirmative action to bring the character of the data to the attention of the Subcontracting Officer;
 - (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract; or
 - (iv) The Subcontractor did not submit a Certificate of Current Cost or Pricing Data.(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Subcontracting Officer based upon the facts shall be allowed against the amount of a subcontract price reduction if –
 - (A) The Subcontractor certifies to the Subcontracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - (B) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the subcontract (or price of the modification) and that the data were not submitted before such date.(ii) An offset shall not be allowed if –
 - (A) The understated data was known by the Subcontractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) SURA proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (d) If any reduction in the subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay SURA at the time such overpayment is repaid –
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date SURA is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

